



0000071359

RECEIVED  
AZ CORP COMMISSION

JUL 22 9 59 AM '97

BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE )  
COMPETITION IN THE PROVISION )  
OF ELECTRIC SERVICES )  
THROUGHOUT THE STATE OF )  
ARIZONA )

DOCKET NO. U-0000-94-165

Arizona Corporation Commission

DOCKETED

## COMMENTS OF DINÉ POWER AUTHORITY

JUL 22 1997

DOCKETED BY

I. Introduction

In October 1996, the Arizona Corporation Commission ("Commission") issued in a Notice of Proposed Rulemaking addressing the provision of retail electric competition in the state of Arizona ("Retail Competition NORP"). The Commission invited written comments on the Retail Competition NORP. Diné Power Authority ("DPA") hereby submits its written comments on the Retail Competition NORP.

DPA is a Navajo Nation ("Nation") enterprise. DPA is the institution within the Nation responsible for the development of electrical resources that can enhance the economic foundation of the Nation. DPA's interests in this proceeding are two-fold. First, DPA is in the initial stages of developing the Navajo Transmission Project, a 500 kV transmission line planned to deliver electric power from northwest New Mexico across northern Arizona to southern Nevada. Second, DPA may engage in future sales of electricity at retail and wholesale as a "power marketer." As a power marketer, DPA may purchase power in the wholesale generation market

from traditional utilities, exempt wholesale generators, qualifying facilities and power marketers.

DPA may then resell that power to wholesale and retail customers in the state of Arizona.

As a competitor in the emerging competitive electric industry, DPA has a strong interest in ensuring that the development of the final rule governing the provision of retail electric competition in Arizona adequately provides for a level playing field among all potential power suppliers.

## II. Communications

DPA requests that all correspondence and communications regarding this proceeding be sent to:

Lisa V. Wayne  
General Manager  
Diné Power Authority  
P.O. Box 3239  
Window Rock, AZ 86515  
(520)-871-2133  
(520)-871-4046 (FAX)

Margie Tenk, ESQ.  
29754 Fir Dr. #B  
Evergreen, CO. 80439  
(303)-674-4320  
(303)-674-4920 (FAX)

### III. Specific Comments Regarding Retail Electric Competition

DPA congratulates the Commission on its initiative to bring electric retail competition to the citizens and businesses of Arizona. DPA recognizes that the consumers of Arizona stand to benefit the most from the Commission's actions and, thus, DPA supports the Commission's initiative.

However, for retail competition to become a reality, the Commission must ensure that there is a level playing field among competing suppliers, and that incumbent franchised utilities or emerging competitors do not engage in anticompetitive conduct. The Commission has taken steps in its Retail Competition NOPR to ensure that franchised electric utilities will be required to offer wheeled services to customers under terms and in a manner comparable to those which it provides itself. DPA suggests that the Commission consider taking additional strong steps to ensure that competing suppliers of electricity are given a fair chance to compete against the generation resources of the incumbent franchised utilities. In this regard, DPA submits the following proposals and requests that the Commission consider these proposals when fashioning any final rule regarding retail electric competition.

1. The Commission Should Require Incumbent Utilities To Functionally Unbundle The Generation Function From The Transmission and Distribution Function

In order to ensure non-discriminatory retail access, the Commission should require incumbent franchised utilities to functionally unbundle the generation function from the transmission and distribution function, with segregated staffs and separate profit and loss responsibility. The objective of this requirement is to ensure that the ratepayers utilizing the

regulated facilities of the transmission and distribution function do not subsidize the unregulated generation function, thereby enabling the incumbent franchised utilities to charge unfair below-market rates.

In April of the year, the Federal Energy Regulatory Commission ("FERC") issued an Open Access Rule aimed at remedying undue discrimination and establishing competition in the wholesale power market.<sup>1</sup> Through the Open Access Rule, public utilities subject to the FERC's jurisdiction were required, among other things, to file open access transmission tariffs. The FERC reasoned that such tariffs will open up transmission lines to competing suppliers. However, the FERC recognized that the filing of such tariffs alone is not enough to remedy possible undue discrimination and to mitigate the unfair competitive advantage enjoyed by incumbent utilities.<sup>2</sup> The FERC "recognize(d) that additional safeguards are necessary to protect against market power abuses."<sup>3</sup> Thus, the FERC also issued Standards of Conduct to govern a utility's relationship between its merchant functions and transmission functions.

---

<sup>1</sup> Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Final Rule, Order No. 888, III FERC Stats. & Regs. 31,036 (1996); 61 Fed. Reg. 21540 (May 10, 1996), reh'g pending (hereinafter "Open Access Rule").

<sup>2</sup> See 61 Fed. Reg. At 21552.

<sup>3</sup> 61 Fed. Reg. At 21552

As the FERC Stated:

The (Standards of Conducts) are designed to ensure that a public utility's employees (or any of its affiliates' employees) engaged in transmission system operations function independently of the public utility's employees (or any of its affiliates' employees) who are engaged in wholesale purchases and sales of electric energy in interstate commerce. Such separation is vital if we are to ensure that the utility does not use its access to information about transmission to unfairly benefit its own or its affiliates' sales.<sup>4</sup>

At the retail level, DPA believes functional unbundling also is needed to ensure fair competition.

2. The Commission Should Adopt A Code of Conduct To Ensure Against Affiliate Abuse

In order to ensure that incumbent franchised utilities or their affiliates do not enjoy an unfair competitive advantage, the Commission should issue clear standards of conduct governing the relationships and communications between the incumbent franchised utilities and their competitive non-regulated affiliates. These rules should provide that utilities engaged in competitive retail electric sales should not have access to information from their regulated affiliates that would give the unregulated company an unfair competitive advantage, such as availability and preferences on the use of transmission and distribution systems.

---

<sup>4</sup> Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Final Rule, Order No. 889, III FERC Stats. & Regs. 31,037 (1996); 61 Fed Reg. 21737, 21740 (May 10, 1996).

3. Affected Utilities" Should Be Required To Take Service Under Their Own Unbundled Service Tariffs

The Commission's Retail Competition NOPR provides the crucial first step toward competition, i.e., requiring incumbent franchised utilities to file and Unbundled Service Tariff and exposing the utilities' historically captive customers to retail choice. However, to ensure that these entrenched utilities do not operate in a discriminatory manner the Commission should go one step further and require these Affected Utilities to take service according to the rates, terms, and conditions contained in their own Unbundled Service Tariff. This requirement will ensure that all users of the Affected Utilities' facilities, the Affected Utility included, are treated the same. By imposing this requirement, the Affected Utility will not be able to discount or otherwise favor its own retail sales and thereby protect its own customer base.

4. The Commission Should Expand Its Concept of Comparability

The Commission proposed to require Affected Utilities to "offer transmission and related services comparable to services they provide to themselves." See R14-2-1606.E. DPA supports this comparability requirement. However, DPA suggests that the Commission should broaden its concept of comparability, such that Affected utilities would be required to offer transmission and related services comparable to services they are capable of providing to themselves, thereby maximizing the efficient use of the electric system.

#### IV. Request For Clarification

The Retail Competition NOPR primarily applies to "Affected Utilities." It appears from the language in the Retail Competition NOPR that entity that is a "public service corporation providing electric service" will be designated as an Affected Utility. See Definition of "Affected Utilities" at R14-2-1601(1). Based on a review of the entities the Commission has identified as Affected Utilities, it also appears that the Commission interprets "public service corporations providing electric service" to include entities that actually deliver electric power to the ultimate consumer and who carry a service obligation to serve those consumers. DPA believes that the Commission's reasoning behind requiring these Affected Utilities to file unbundled Services Tariffs is to provide what has traditionally been an Affected Utility's captive customers with an opportunity to participate in the competitive market. From this perspective, DPA supports the Commission's Unbundled Service Tariff initiative.

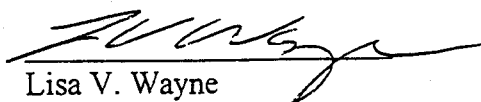
DPA requests clarification, however, of what standards the Commission has employed and will continue to employ to determine whether an entity is or should be characterized as an Affected Utility. Further, DPA requests clarification that entities that merely own transmission facilities used to effectuate wholesale of bulk power will not be classified as Affected Utilities. Although wholesale sales and transmission of electricity are subject to the exclusive jurisdiction of the FERC, such a clarification and distinction comports with what DPA understands is the intent behind many of the proposed obligations in the Retail Competition NOPR, in that, unlike the state's incumbent franchised utilities that would seek to protect their existing consumer base,

mere owners of transmission facilities used to effectuate wholesale or retail transmission of electricity in interstate commerce have no consumer base to protect and carry no obligation to serve. The customers of such transmission are companies that have been retained through arm's length negotiations. Further, to classify such transmission owners as Affected Utilities would unnecessarily burden these entities with the requirements proposed in this Retail Competition NOPR, i.e., requiring them to incur the cost of developing service tariffs and accompanying rates for a tariff that nobody will ever use.

#### V. Conclusion

DPA appreciates this opportunity to contribute to the Commission's policy development of issues related to its retail electric competition proposal. DPA applauds the Commission for its initiative and supports its desire to bring competition to the retail electric industry in Arizona. As the Commission fashions its final rule, DPA requests that the Commission consider, address and incorporate the points raised above. DPA believes that the inclusion of these points will help ensure that true retail competition becomes a reality in Arizona.

Respectfully submitted,



Lisa V. Wayne  
General Manager  
Diné Power Authority